

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

# OSCAR IVAN VELASQUEZ- QUINONES,

Plaintiff,

V.

XAVIER BECERRA, et al.,

## Defendants.

Case No. 1:17-cv-00794-BAM (PC)

ORDER DISMISSING ACTION WITHOUT  
PREJUDICE FOR FAILURE TO PAY FILING  
FEE AND FAILURE TO OBEY COURT  
ORDER

(ECF No. 3)

## I. Background

Plaintiff Oscar Ivan Velasquez-Quinones (“Plaintiff”) is a former state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.<sup>1</sup> Plaintiff initiated this action on June 12, 2017. (ECF No. 1.) However, Plaintiff failed to file an application to proceed in forma pauperis or pay the \$400.00 filing fee in full. Therefore, on June 21, 2017, the Court ordered Plaintiff to submit a non-prisoner application to proceed in forma pauperis or pay the filing fee within thirty (30) days. The Court warned Plaintiff that his failure to comply with the order would result in dismissal of this action. (ECF No. 3.) More than thirty days have passed, and Plaintiff has neither submitted an application to proceed in forma pauperis nor paid the filing

<sup>1</sup> Plaintiff has consented to the jurisdiction of a United States Magistrate Judge. (ECF No. 4.)

1 fee.

2       **II.     Discussion**

3       District courts have the inherent power to control their dockets and “[i]n the exercise of  
4 that power they may impose sanctions including, where appropriate, . . . dismissal.” Thompson v.  
5 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
6 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure  
7 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995)  
8 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260–61 (9th  
9 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);  
10 Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to  
11 comply with court order).

12       In determining whether to dismiss an action, the Court must consider several factors:  
13 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
14 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
15 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779  
16 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988); see also In  
17 re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006)  
18 (standards governing dismissal for failure to comply with court orders). These factors guide a  
19 court in deciding what to do and are not conditions that must be met in order for a court to take  
20 action. Id. (citation omitted).

21       A civil action may not proceed absent the submission of either the filing fee or an  
22 application to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. Here, Plaintiff has not filed  
23 an application to proceed in forma pauperis or paid the filing fee. Plaintiff also has not responded  
24 to the Court’s order. This action can proceed no further without Plaintiff’s cooperation and  
25 compliance. Moreover, the matter cannot simply remain idle on the Court’s docket,  
26 unprosecuted, awaiting Plaintiff’s compliance. As a result, the Court is left with no alternative but  
27 to dismiss this action.

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1                   **III. Conclusion and Order**

2                   Based on the foregoing, this action is HEREBY DISMISSED, without prejudice, for  
3 Plaintiff's failure to comply with the Court's order of June 21, 2017, (ECF No. 3), and his failure  
4 either to submit an application to proceed in forma pauperis or pay the filing fee.

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6                   IT IS SO ORDERED.

7                   Dated: August 1, 2017

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9                   /s/ Barbara A. McAuliffe  
10                   UNITED STATES MAGISTRATE JUDGE

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